

APPENDIX I

Patient Self-Determination Act: Departmental Instruction No. 120



COMMONWEALTH of VIRGINIA

DEPARTMENT OF

Mental Health, Mental Retardation and Substance Abuse Services

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TO: Hospital and Training Center Directors
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FROM: King E. Davis, Ph.D. *KED*
Commissioner

SUBJECT: Departmental Instruction No. 120
PATIENT SELF-DETERMINATION ACT

DATE: November 18, 1991

Attached is the final version of Departmental Instruction No. 120, **PATIENT SELF-DETERMINATION ACT** for implementation December 1, 1991. This incorporates your comments and recommendations and has been reviewed by the Office of the Attorney General.

This instruction provides guidance for implementation of the requirements of the Omnibus Reconciliation Act of 1990 (OBRA '90) to ensure that patients or residents of our facilities are informed of their rights under state law to make health care decisions, including the right to accept or refuse treatment and the right to execute a living will or durable health care power of attorney.

The Office of the Attorney General is available to provide interpretation and guidance for this departmental instruction.

KED/RG/ys

Attachment

cc: Jane Hickey
Julie Stanley
Aubrey Lucas
Sandra Blacker

I-164

VOICE
F.A.

DEPARTMENTAL INSTRUCTION NO. 120
SUBJECT: PATIENT SELF-DETERMINATION ACT

- 1 **Purpose:**
To comply with the requirements of the Omnibus Reconciliation Act of 1990 (OBRA '90) to ensure that patients or residents of facilities are informed of their rights under state law to make health care decisions, including the right to accept or refuse treatment and the right to execute a living will or durable health care power of attorney.

- 2 **Background:**
The Patient Self-Determination Act, incorporated into the Omnibus Reconciliation Act of 1990, addresses the concern of many people that their wishes regarding medical treatment and health care decisions, especially at the end of their life, be followed. OBRA '90 encourages communication among patients, families, physicians, and professional care givers on the issues of "advance directives" and requires that all adult individuals receive written information about their rights under state law to make health care decisions, including the right to accept or refuse treatment and the right to execute a living will or durable health care power of attorney.

3. **Policy:**
 - A All adult patients or residents will receive written information about their right to accept or refuse treatment as contained in the Rules and Regulations to Assure the Rights of Residents at facilities operated by the Department (the Human Rights Regulations), as well as their right to execute a living will under the Natural Death Act of Virginia and a durable health care power of attorney under the Code of Virginia, § 37.1-134.4.

 - B. This information will be provided to all adults upon admission or as soon as clinically appropriate. If the patient or resident is incapacitated or is otherwise unable to receive the information, the facility will document this fact in the medical record. Should the patient or resident become no longer incapacitated, such information will be provided to the patient or resident at that time. Information concerning living wills and durable health care powers of attorney will be provided to an incapacitated patient's or resident's authorized representative when they are appointed and in the same manner as the authorized representative is advised of rights provided under the Human Rights Regulations.

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- C. Each adult patient or resident will be asked whether he or she has executed a living will and/or durable health care power of attorney. The patient's or resident's response will be documented in the medical record. If the patient or resident is unable to communicate whether such a document has been executed, that fact will be recorded in the medical record. This information may be obtained through the routine medical or social history prepared during the admission process.
- D. No patient or resident shall be discriminated against based on whether he or she has executed a living will or durable health care power of attorney.
- E. Each facility director will ensure that the provisions of any duly executed living will or durable health care power of attorney is followed. Should any questions arise concerning the validity or provisions of any such document, the facility shall consult with the Office of the Attorney General.
- F. Each facility director shall provide for education of staff and the community.

4. Authority and References:

- A. Omnibus Reconciliation Act of 1990, Sections 4206 and 4751
- B. *The Code of Virginia, § 37.1-84.1*
- C. *The Code of Virginia, § 37.1-134.4*
- D. *The Code of Virginia, § 54.1-2981 et seq. Natural Death Act of Virginia*
- E. Rules and Regulations to Assure the Rights of Residents of Facilities Operated by the Department
- F. DMAS Regulations on Advance Directives

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- G. "Your Right to Decide," a pamphlet prepared by the Virginia Hospital Association
- H. Virginia's Living Will Declaration, Virginia Department for the Aging, May 1991 - attached

5. Definitions:

- A. "Durable health care power of attorney" is an advance directive or health care proxy given by one individual to another that grants the named individual the right to make treatment decisions for the person when they are not capable of making their own decisions.
- B. "Incapable of making an informed decision" means unable to understand the nature, extent or probable consequences of a proposed treatment, or unable to make a rational evaluation of the risks and benefits of alternatives to that treatment.
- C. "A Living Will" is a document that directs the care for a person who is in a terminal condition and who is unable to make their own decisions.

6. Procedures:

- A. Each facility director shall assure that each patient or resident is provided with written information about their right to accept or refuse treatment as provided in the Rules and Regulations to Assure the Rights of Residents.
- B. Each facility director shall assure that all adult patients or residents are provided with written information concerning their rights to execute a living will under the Natural Death Act of Virginia and a durable health care power of attorney under the Code of Virginia, § 37.1-134.4. upon admission or as soon as clinically appropriate. This may be accomplished by providing the patient or resident with the pamphlet "Your Right to Decide."

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- C. If the patient or resident is not capable of receiving such information, the information will be provided to the patient's or resident's authorized representative in the same manner as is provided in the Human Rights Regulations for advising families and authorized representatives of their rights under the Code of Virginia, § 37.1-84.1 and the Regulations.
- D. All adult patients or residents will be asked whether they have executed a living will or a durable health care power of attorney during the admission process or as soon as clinically appropriate. If the patient or resident is unable to respond, that fact will be documented in the medical record.
- E. If the patient or resident has a living will or a durable health care power of attorney, the patient's or resident's response will be documented in the patient's or resident's record. The facility will request to see the living will and/or power of attorney, make photocopies, and return the original to the patient or resident or the authorized representative. If the living will or durable power of attorney is not available upon request, the facility will ask that the documents be sent to the facility or will make a reasonable effort to obtain a copy of the documents on the patient's or resident's behalf. Once received, copies of documents will be placed in the patient's or resident's medical record.
- F. If patient or resident indicated that he or she would like to execute a living will or power of attorney, and the treatment team determines that the patient or resident is capable of making such a decision, the patient or resident will be referred to the advocate for additional information and assistance. The advocate may provide the patient or resident with the attached living will as provided in the Code of Virginia, § 54.1-2984 and assist the patient or resident in executing the document. If the patient or resident would like to alter the suggested form or execute a durable health care power of attorney, the advocate should refer the patient or resident to a private attorney or legal aid society. (Note: Under Virginia law, only a competent adult may execute a living will or power of attorney.) If the facility director is the authorized representative, the facility director may not make any decisions authorizing termination of life prolonging measures under these circumstances without consultation with the Attorney General's Office.

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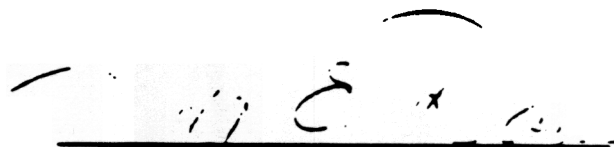
- G. If a conflict or disagreement develops between the patient or resident and family members, or if questions arise concerning the validity or any provisions of any document, the facility should consult the Office of the Attorney General concerning further steps that should be taken.
- H. When a patient or resident transfers within the Department's system or to other public or private facilities, a copy of the living will and/or durable health care power of attorney shall accompany the patient or resident.

The facility director shall assure that information regarding living wills and durable health care powers of attorney shall be provided to patients or residents admitted prior to December 1, 1991 or to their authorized representatives.

- J. Each facility will develop policies and procedures to ensure implementation of the Departmental Instruction, including development of staff and community education programs.

7. Interpretation:

Interpretation and guidance for this Departmental Instruction are available from the Office of the Attorney General.



King E. Davis, Ph.D.
Commissioner

EFFECTIVE DATE: December 1, 1991

VIRGINIA'S LIVING WILL DECLARATION

Declaration made this _____ day of _____ 9

_____ willfully and voluntarily make known my desire and do hereby declare:

CHOOSE ONLY ONE OF THE NEXT TWO PARAGRAPHS AND CROSS THROUGH THE OTHER

If at any time I should have a terminal condition and I am comatose, incompetent or otherwise mentally or physically incapable of communication, I designate (insert person's name here) _____ to make a decision on my behalf as to whether life-prolonging procedures shall be withheld or withdrawn. In the event that my designee decides that such procedures should be withheld or withdrawn, I wish to be permitted to die naturally with only the administration of medication or the performance of any medical procedure deemed necessary to provide me with comfort care or to alleviate pain. (OPTION - I specifically direct that the following procedures or treatments be provided to me: _____

OR

If at any time I should have a terminal condition where the application of life-prolonging procedures would serve only to artificially prolong the dying process, I direct that such procedures be withheld or withdrawn, and that I be permitted to die naturally with only the administration of medication or the performance of any medical procedure deemed necessary to provide me with comfort care or to alleviate pain. (OPTION - I specifically direct that the following procedures or treatments be provided to me: _____

In the absence of my ability to give directions regarding the use of such life-prolonging procedures, it is my intention that this declaration shall be honored by my family and physician as the final expression of my legal right to refuse medical or surgical treatment and accept the consequences of such refusal.

I understand the full import of this declaration and I am emotionally and mentally competent to make this declaration.

(Signed) _____

The declarant is known to me and I believe him or her to be of sound mind.

Witness _____

Witness _____

Prepare copies as follows (check):

Original copy

Physician's copy

Attorney's copy

Family

For more information on living wills call the Virginia Department for the Aging toll free 1-800-552-4464 (voice/TDD)

Courtesy of the Virginia Department for the Aging